JACK J. GRYNBERG

IBLA 91-379 Decided February 16, 1994

Appeal from a decision of the Montana State Office, Bureau of Land Management, affirming an assessment for failure to comply timely with a written order. INC No. JB225-2; SDR No. 922-91-18.

Affirmed.

1. Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Incidents of Noncompliance

Under 43 CFR 3163.1(a)(2) BLM may properly assess an oil and gas operator $250 for failure to comply timely with a notice of incident of noncompliance directing the operator to paint production equipment and facilities, as previously required as a condition of approval of a sundry notice.

APPEARANCES: Jack J. Grynberg, pro se; Karan L. Dunnigan, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Billings, Montana,
for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Jack J. Grynberg has appealed from the June 21, 1991, decision of the Montana Deputy State Director, Bureau of Land Management (BLM), sustaining a May 13, 1991, incident of noncompliance (INC), issued by BLM's Miles
City, Montana, District Office. The INC assessed two $250 fines for
two separate conditions at the Federal No. 2 wellsite, Jackson Coulee, Montana: (1) failure to remove timber and woody material from the site;
and (2) failure to paint production equipment and facilities. The only condition at issue in this appeal is the latter.

On or around July 5, 1989, Grynberg submitted a sundry notice indicating that production equipment had been installed on the Federal No. 2 well. BLM approved that sundry notice on July 18, 1989, but attached a condition of approval to the notice requiring that "[a]ll production facilities and equipment must be painted Desert Brown."

On November 30, 1990, Grynberg was issued an INC (No. JB217-2) for failure to meet that condition. No assessment was made, however. The
INC specified that correction action was to be completed by May 1, 1991.

On February 19, 1991, BLM approved a sundry notice, filed by Grynberg on January 21, 1991, requesting an extension of time to correct the failure

to remove timber and woody material from the site. However, BLM expressly reaffirmed that "[p]ainting of production facilities must be completed no later than May 1, 1991."

On May 10, 1991, a Grynberg employee met with BLM officials at the wellsite. 1/ The facilities and equipment had not been painted. On May 13, 1991, BLM issued the INC that is directly at issue in this appeal (No. JB225-2). That INC cited Grynberg for "failure to comply within the timeframe specified by INC JB217-2." It directed corrective action to be completed within 20 days of receipt of the notice and assessed Grynberg $250 for noncompliance.

In his June 5, 1991, request for State Director review, Grynberg alleged that it was agreed at the May 10 meeting at the wellsite that (weather permitting) the facilities would be painted within 3 days of May 18, 1991, the date paint would be delivered to the location. The Acting Deputy State Director found that Grynberg had failed to present proof that an extension beyond May 1, 1991, was sought or granted for the painting. 2/ Accordingly, he affirmed the $250 assessment for that item.

On appeal, Grynberg does not challenge BLM's authority to require painting or deny that the painting was not completed by May 1, 1991, as directed in the original INC. He asserts that, in an April 18, 1991, telephone conversation, a BLM employee "granted Grynberg an extension until May 11, 1991 to take corrective action." Grynberg contends that at the May 10, 1991, meeting at the wellsite "it was decided among other things that the production facilities would be painted as soon as the paint could be delivered and as weather permitted." Grynberg also contends that the agreement reached at the wellsite meeting, to paint the facilities at some time in the future, constituted "final satisfaction of the INC." Grynberg further argues that the extensions granted for abate-ment of INC No. JB217-2 "applied to all the violations and not just spe-cific ones," and that the decision appealed confirms that BLM granted an extension until May 11, 1991 to take corrective action.

BLM points out in its answer that the record fails to disclose that an extension was granted beyond May 1, 1991, to complete the painting. BLM points out that the May 10, 1991, meeting, 10 days after the INC deadline "was not timely to constitute initial corrective action."

[1] Under 43 CFR 3163.1(a)(2), if the violation is minor, BLM may levy an assessment of $250 for failure to comply with an order of the authorized officer within the time allowed. See Joseph B. Gould, 120 IBLA 237 (1991),

1/ The record does not contain a BLM document memorializing what transpired at that meeting.
2/ The Acting Deputy State Director did find that an extension had been allowed for Grynberg to deal with removal of timber and woody material from the site. Accordingly, he vacated the INC issued for failure to comply with that condition.

and cases cited. Appellant does not allege timely compliance with BLM's order to paint the facilities. Rather, appellant alleges that an extension granted on April 18, 1991, for removal of timber and woody material also applied to the painting. Alternatively, appellant alleges that agreement was reached at the wellsite meeting extending the time for completing the painting.

The record contains BLM's record of conversation of the April 18, 1991, telephone conversation where (Grynberg argues) a BLM employee granted him an extension until May 11, 1991, to take corrective action" on both conditions found to be in violation. According to that document, the conversation can reasonably be interpreted only as granting an extension to May 11, 1991, for removal of the timber and woody material. It does not refer to any other violation; therefore, it does not support an inference that extension was also being granted for the painting.

The record shows that BLM had a reasonable basis to grant Grynberg additional time to remove the timber and woody material: he had developed an alternate plan for disposing of that material, in view of the substantial cost of removing it from the site. BLM was reviewing that proposal. Thus, it is reasonable to presume that the discussion of an extension was limited to the question of disposing of the timber and woody material. In contrast, there appears to have been no discussion about the need for more time to paint the facilities.

That BLM did not regard the arrangement made at the wellsite on May 10 as a retroactive extension is amply demonstrated by the issuance of the INC.

There is no evidence in the record which shows that Grynberg communicated with BLM regarding an extension beyond May 1, 1991, to comply with
the order to paint his equipment. The law is well settled that a party challenging BLM's determination that violations were not abated within the allotted period has the burden to prove by a preponderance of the evidence that BLM's determination is incorrect. Omimex Petroleum Inc., 123 IBLA 1, 4 (1992). Grynberg has not met this burden.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

David L. Hughes
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge